Reaſons ſhewing the conſiſtency of the place of Cuſtos Archivorum *with that of a* Savilian Profeſsor.

WHEREAS ſome objections have been ſuggeſted as if the place of *Cuſtos Archivorum* were inconſiſtent with that of a Savilian Profeſſor, becauſe of thoſe words *Nullum* [*acceptet*] *in Vniverſitate publicum officium* (*ut Vicecancellarii, Procuratoris, Clerici Mercatûs, & ſimilium*) *ſub pœna amiſſionis omnis juris quod in Profeſſione ſua prætendere valeat.* (Though if it were ſo, a *Savilian Profeſſor* were no more incapable of being choſen to that office, then a Fellow of a Colledge to bee choſen Head, or preſented to a living, which if he accept he muſt looſe his Fellowſhip.) Theſe Reaſons are exhibited to the contrary.

1. That by *publicum officium*, is not here meant, all publike imployment in the Univerſity whatſoever, is manifeſt: For if ſo, then might not the *Savilian Profeſſors* be ordinary Delegates of Convocation, Delegates for Accounts, for Apeales, for Printing, for ſurveying Records, for making and reforming Statutes, &c. contrary to the known conſtant uſage of the Univerſity.

2. The Statute expreſſely declaring, what kind of Publike Offices it doth intend, (to wit, that of Vice-Chancellor, Proctor, Clerk of the Market, & ſuch as are like theſe,) is not to be extended beyond ſuch as are there mentioned. Now 'tis manifeſt, that this is neither one of thoſe three there mentioned, nor yet of like nature with any of them: They being all Offices of Magiſtracy, and publike Government: this only a place of Truſt.

3. The Imployment of *Cuſtos Archivorum*, is ſo far from being one of the Offices intended in that Statute, that 'twas not then in being when that Statute was made: and therefore cannot be reputed one of thoſe there intended; but at the moſt *Caſus omiſſus*.

If it be further objected, That though it be not within the letter of the Statute, yet there may be as much reaſon why the Founder might have forbidden this as ſome of thoſe which bee did forbid, and therefore that it might be thought within the equity of the Statute:

'Tis anſwered; Not onely, That we are not to enquire, eſpecially in penal Laws, what *might* have been forbidden, but what *is*: or, That *& cætera's*, and *par ratio*, are not, in Law, of any great weight for drawing in other crimes beſide what are particularly expreſſed (though in point of favour, they are good grounds for relief in equity, againſt the rigor of a Law:) or, That penal Laws are to be interpreted in the more favourable ſenſe.

But alſo, That, in equity, there is much more reaſon for relief againſt thoſe particulars which are expreſſed, than to draw in ſuch as are not: Becauſe the Revenues of the Savilian Profeſſors come much ſhort, not onely of what Sir *Henry Savil* did intend to ſettle, but even of what he thought he had, and the Statutes do expreſly preſume to be, actually ſettled. And therefore no reaſon to make the prohibition of other employments more ſtrict than he hath made it, but rather more lax.

And upon this account, not onely Dr. *Bainbrige* (though a Profeſſor of Sir *Henry Savils* own appointment in his life time) continued, with it, his practiſe of Phyſick (an imployment both of greater gain, and greater diverſion, than this of *Cuſtos Archivorum*) and alſo a place in *Merton* College: But alſo Dr. *Turner*, before a Committee of Parliament, juſtified his holding a Fellowſhip (though in that Statute expreſly forbid) together with his Profeſſors place: And Mr. *Greaves* injoyed the profits of his Profeſſors place, together with a Fellowſhip of *Merton* College. And though theſe two latter examples, being againſt the Letter of the Statute, might therefore be thought more diſputable; yet in the preſent caſe, where no ſuch thing is, there is no reaſon upon pretenſe of equity, to make the Statute ſtricter than it is.

So that neither the letter of the Statute, nor the equity of it, can in reaſon be interpreted to exclude the place of Savilian Profeſſor, as inconſiſtent with that of *Cuſtos Archivorum*.